



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 5204-99
28 February 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: QM1(SW) [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 5 Aug 99 w/attachments
(2) NRC memo dtd 25 Jan 00
(3) Memo for record dtd 10 Feb 00
(4) Memo for record dtd 22 Feb 00

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected, after his successful completion of Officer Candidate School (OCS), to show he was granted an original commission as an ensign in the Naval Reserve on 2 May 1999.

2. The Board, consisting of Mses. Davies and Newman and Mr. Tew, reviewed Petitioner's allegations of error and injustice on 24 February 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. An administrative error in the evaluation of Petitioner's physical qualification for a commission caused a delay that resulted in his ineligibility for a commission. Because of a requirement that he be able to complete 20 years of active commissioned service before age 55, he had to accept a commission before 3 May 1999, his thirty-fifth birthday.

c. In correspondence attached as enclosure (2), the Navy Recruiting Command (NRC) office with cognizance over the subject matter of this case has commented to the effect that Petitioner's request has merit and warrants favorable action.

d. The memorandum for the record (MFR) at enclosure (3) documents a telephone conversation a member of the Board's staff had with the officer who signed the advisory opinion from NRC. The officer clarified the advisory opinion by stating that he recommended relief be granted only after Petitioner successfully completed OCS.

e. The MFR at enclosure (4) documents that Petitioner did not desire to submit a rebuttal to the advisory opinion from NRC, and that he still wanted to attend OCS to earn a commission.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action.

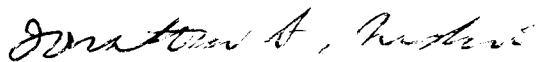
RECOMMENDATION:

a. If Petitioner successfully completes OCS, that his naval record be corrected, where appropriate, to show he received a commission as an ensign in the Naval Reserve on 2 May 1999.

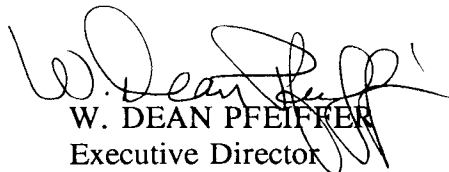
b. That a copy of this Report of Proceedings be filed at an appropriate location in Petitioner's naval record, and that another copy of this report be returned to this Board, together with any material directed to be removed from Petitioner's record, for retention in a confidential file maintained for such purpose.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY
NAVY RECRUITING COMMAND
5722 INTEGRITY DR.
MILLINGTON, TENNESSEE 38054-5057

5204-99

IN REPLY REFER TO:

1133
Ser 31/
25 Jan 00

From: Commander, Navy Recruiting Command
To: Executive Director, Board for Correction of Naval Records

Subj: BCNR REQUEST ICO QM1 [REDACTED] ON, USN,
[REDACTED]

Ref: (a) OPNAVINST 1120.2C

Encl: (1) BCNR Docket Nr. 05204-99

1. Recommend approval of enclosure (1). Request a backdated commission of 2 May 1999 upon [REDACTED]'s successful completion of Officer Candidate School.

2. In November 1998, pursuant to reference (a), [REDACTED] was accepted into the active duty U.S. Naval Reserve Officer Program; however, an initial medical misdiagnosis by Navy personnel prevented him from attending Officer Candidate School. A subsequent reevaluation of [REDACTED]'s medical records by the Chief, Bureau of Medicine and Surgery corrected the oversight and determined that he was physically qualified for commissioning.

3. Because of the age requirements imposed by Section 532 of Title 10, United States Code, [REDACTED] was required to complete Officer Candidate School before his 35th birthday on 3 May 1999. But for the initial medical misdiagnosis, [REDACTED] would have completed Officer Candidate School in time. However, because the reevaluation of [REDACTED]'s medical records occurred after 3 May 1999, he is now physically qualified for commissioning, but ineligible based on age.

4. [REDACTED] has attempted to obtain a Congressional waiver from the statutory age requirements described above; however, his efforts have been unsuccessful. A backdated commission date of 2 May 1999 is now the only way to correct the medical oversight and allow [REDACTED] to attend Officer Candidate School.

5. This is an advisory memorandum for use by the Board for Correction of Naval Records only. [REDACTED] (1) is returned.

[REDACTED]
by Direction

FEB 9 2000

MEMORANDUM FOR THE RECORD

DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
PERFORMANCE SECTION
2 NAVY ANNEX, STE. 2432
WASHINGTON, DC 20370-5100
COMM: (703) 614-9842 OR DSN: 224-9842
FAX: (703) 614-9857 OR 224-9857

DATE: 10FEB00

DOCKET NO: [REDACTED]

PETITIONER (PET): [REDACTED] ON, USN

PARTY DISCUSSED CASE WITH: LCDR [REDACTED] USN

TELEPHONE NO: DS [REDACTED]

WHAT I SAID: I ASKED LCDR [REDACTED] TO EXPLAIN THE ADVISORY OPINION HE SIGNED ON 25JAN00.

WHAT PARTY SAID: LCDR [REDACTED] INFORMED ME THAT HIS OFFICE WAS RECOMMENDING A BACKDATED COMMISSION ONLY UPON COMPLETION OF OCS. HE THOUGHT THAT THE BCNR COULD WAIVE THE AGE LIMIT AND ALLOW PET TO ATTEND OCS.

[REDACTED]

MEMORANDUM FOR THE RECORD

DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
PERFORMANCE SECTION
2 NAVY ANNEX, STE. 2432
WASHINGTON, DC 20370-5100
COMM: (703) 614-9842 OR DSN: 224-9842
FAX: (703) 614-9857 OR 224-9857

DATE: 22FEB00

DOCKET NO: [REDACTED]

PETITIONER (PET): [REDACTED] ON, USN

PARTY DISCUSSED CASE WITH: PET

TELEPHONE NO: N/A

WHAT I SAID: I ASKED PET IF HE WANTED TO SUBMIT A REBUTTAL TO THE
AO OR MFR.:

WHAT PARTY SAID: PET INFORMED ME THAT HE DID NOT WANT TO SUBMIT
A REBUTTAL, BUT SAID THAT HE WANTED THE BOARD TO BE AWARE THAT
HE STILL WANTS TO ATTEND OCS AND EARN A COMMISSION.

[REDACTED]